

Throwing the EU Off Balance

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2019-07-05T18:47:20

The battlefield after the European Council summits is still coated with dust, but damages to Central and Eastern Europe and more specifically the Polish and Hungarian government are already visible. There will be no representative of the new Member States (those that entered the EU in and after 2004) among the top jobs. This result is also the consequence of the *Spitzenkandidaten* model which works to the detriment of smaller Member States and parties and undermines the EU's basic pillars.

Poland, once blessed with a president of the European Parliament (EP), heads of influential European Parliament committees and with the president of the European Council, even lost the position of a EP vice-president to a member of the Italian Five-Star movement. Since 2015, the Law and Justice (PiS) – the ruling party in Poland – used to portray its attempts to strengthen the Visegrád Four (V-4) as a counterforce against German and French hegemony, but it now praises Ursula von der Leyen as the almost perfect head for the next European Commission. Waiving their anti-German edge, leading PiS politicians declare her to be “a conservative rather than a German” and celebrate their victory of having prevented Frans Timmermans from taking the Commission presidency. In Hungary and Poland, he is as much feared as hated for his tough and public defence of the EU's rule of law principles. He will most probably remain vice-president and may even keep the justice portfolio.

For the Polish and the Hungarian government, the Timmermans issue was more important than getting a piece of the cake and for the Polish government, it was even worth getting more German (and French) politicians into EU top jobs than before. It is not the only paradox of Polish (and Hungarian) EU politics. Readers from Western Europe may also be surprised to hear that Central and Eastern European media and experts never picked up on the *Spitzenkandidaten* debates. Not even the opposition criticises the abolition of the *Spitzenkandidaten* concept as undemocratic. It is just no topic. Whenever an op-ed touches upon it, it echoes the West European lamentations about the failed chance to democratize the EU, equalizing democracy with popular vote.

This negligence is even more astonishing as the collateral effects of the concept have far-reaching consequences for the EU's constitutional order, consequences, which are potentially detrimental for the interests of the new Members States, almost all of which are (with the exception of Poland) rather small.

Towards the nation-state or the citizen?

So far, the V-4 have promoted a readjustment of the EU's constitutional equilibrium into the direction of a Union of states, rather than citizens, a EU with weaker supranational institutions and far more competences for national parliaments and

vetoing in the Council. One might argue, that Member States had a maximum of sovereignty and veto rights before the European Community of Coal and Steel was founded and that re-nationalising competences would subvert the EU's evolution and the reason, why it came into being. It would also make the EU less democratic than it is, an argument, which counters the popular accusations about the EU's democratic deficit. The EU would be even less democratic, the more competences it returned to the Member States. In a Union of national vetoes and national parliaments overruling (or replacing) the European Parliament, with a weak Commission and a weak Court of Justice, the vote of Luxemburg's prime minister, representing 700 000 citizens, would count just as much as the vote of the German Chancellor, representing 82 million citizens. Nevertheless, the governments of Hungary, Poland and Italy have every right to promote such a vision, but its implementation would require a treaty revision. And, to be honest, those populist politicians who usually advocate such a readjustment towards national sovereignty, usually also demand a treaty revision. They naively assume, their vision could survive a European Convention, an intergovernmental conference and the ratification process in all Member States. They make their proposals mostly for internal consumption rather than to launch a real reform process – and all that is quite transparent.

But there is also a move into the opposite direction and it came with the *Spitzenkandidaten*. It is a move towards more democracy and less competences for Member States, but it is less transparent and much trickier than the naive populist concepts. This may also be the reason why almost everyone has neglected it – including the Central and East European governments, for whom it is potentially very detrimental. To understand this, it is necessary to go back to two basic principles, on which the EU was built and which both, right wing populists and the advocates of the *Spitzenkandidaten* model, want to change.

The EU's fragile institutional construction

The EU is based on its treaties, which were meticulously negotiated between Member States and then ratified by their parliaments (and sometimes also had to be endorsed by democratically elected presidents and the respective constitutional courts). In these treaties, there is no and never was any provision forcing the European Council to nominate the candidate, whose party family had obtained most of the votes or mandates during the European elections. The Council is free to nominate anyone it deems fit for the job and then it is up to the European Parliament to accept or reject them. This is what [Art. 17 TEU](#) says and if the EP wants to bind the Council's hand it can try to do so but it cannot claim this to be more democratic or "closer to the citizen" than the literal application of the respective treaty provisions. The European Union is no nation state and it cannot be incrementally democratized without any negative repercussions for its functioning and its legitimacy. Even if we apply the nation state standard to the EU, we will find that the democratic legitimacy of the European Council – which comprises democratically elected heads of governments and often also directly elected presidents – is not at all weaker than the democratic legitimacy of the EP's members, many of whom obtained their mandates in elections with a much lower voter turnout than most of the presidents who sit in the European Council. Under the treaties, both are entitled to decide

freely. But this is not the only reason why the *Spitzenkandidaten* model, which the biggest party families invented five years ago, was wrong and prone to derail the EU's fragile institutional construction and why the 2019 European Council's decision to abolish it, was right.

While the EU's Member States are usually based on the principle of representative democracy only (which, in some Member States is under stress now, but that is another topic) the EU is based on two competing principles: the principle of representative democracy and the principle of respect for the sovereignty of its Member States. In other words, as [the treaties say](#): The EU is a union of citizens and states. Both have rights. And emphasizing and enlarging the rights of the citizens to the detriment of the Member States is just as wrong and illegitimate as enlarging the rights of the Member States to the detriment of the citizens. Re-balancing this equilibrium must be left to treaty changes, [in line with the procedures](#) prescribed in [Art. 48 TEU](#): the European Council must call another Convention, followed by an intergovernmental conference and the result must be ratified according to each Member State's constitution. The institutions alone cannot undermine one of the EU's pillars without damage for the entire construction.

There is nothing easier than to radically democratize the EU and make it a mere "Union of the citizens". One can give the European Parliament more competences and rights, make the election rules to the EP strictly proportional, so that every MEP needs the same number of votes to get into the EP, introduce a EU-wide referendum. The EU will be extremely democratic, but it will lose its legitimacy among smaller Member States, because in such a Union, the citizenry of a few big Member States can outvote the citizens of the majority of small Member States. In such a referendum, the big five (Germany, Italy, France, Spain and Poland) can easily outvote any opposition from Luxemburg, Malta, Cyprus, Estonia, Portugal and all the other smaller Member States and are able to push through any legislation or political decision they want, no matter how disadvantageous it would be for their smaller partners. It would be perfectly democratic: one (wo)man – one vote, the vote of a German would count just as much as the vote of a Maltese (under the current system, MEPs from small countries need much less votes than MEPs from large Member States to get elected) and no national vetoes or blocking majorities in the Council could prevent democracy from blossoming. The only, but very far reaching, consequence would be the small Member States leaving the Union, because it would no longer be theirs.

Cloaking the undemocratic shift towards a more democratic EU

The system of *Spitzenkandidaten* is the first step towards democratisation without a treaty revision. Make no mistake: It is no accident, that the very word *Spitzenkandidaten* can hardly be translated into other languages. It is a German invention and it worked for the public in Germany and for the two big party families, the Left and the Conservatives. Five years ago, the *Spitzenkandidaten* were politicians which were best known by the EU's German speaking publics

in Germany, Austria and Luxemburg (Martin Schulz and Jean-Claude Juncker). The pattern replicated itself this year with Martin Weber and Frans Timmermans. According to the treaties, the procedure to find a new Commission president is open: The Council can nominate anyone. The system of *Spitzenkandidaten* narrows the selection down to the two big party families. This excludes politicians from smaller party families (the liberals, the Greens, the radical left, the right-wing populists and those without party affiliations) from the outset. And it discriminates against candidates from small countries, whose national delegation in a EP faction usually struggles much more to garner support than the delegation of big Member States. And it is a system which only works for the publics of the big Member States. It is no accident, that almost all MEPs who now criticize the European Council for abolishing the system, are German MEPs. There, the *Spitzenkandidaten* conducted their campaign, there, the media followed it. Ask a taxi driver in Porto, whether he knows something about Manfred Weber. A Polish taxi driver might know something about Frans Timmermans (mainly because of the rule of law issue), but what about a peasant in Slovakia or a barber in Croatia? Timmermans at least won a national election and served as Commission vice-president and member of the Dutch cabinet. Weber obtained his nomination due to the internal dynamics of the German coalition government (which would lose its majority in the Bundestag without the CSU, a regional party which only exists in one of the 16 German *Länder*), which in return coerced the much bigger CDU into endorsing and promoting his candidacy inside the European People's Party.

The system of *Spitzenkandidaten* is a smart trick which pretends that the exclusion of candidates from small party families and tiny Member States is more democratic than the open procedure of the treaties, although these *Spitzenkandidaten* tend to be selected even less transparently than the ones selected by the interplay between the European Council and the European Parliament.

Right wing populists try to push the EU towards more sovereignty and less democracy. The supporters of the *Spitzenkandidaten* model look more sympathetic, because they fight in the name of democracy. But opposite to the former, they want to achieve their objectives without even talking about treaty reform. Five years ago, they had their victory, now they try to entrench it once and forever. They have every right to advocate for such a shift away from a “Union of states” to a “Union of citizens”, but they owe us transparency, too: To be legitimate, such a shift requires a treaty reform, not just another inter-institutional agreement, like the one [announced by von der Leyen](#) on Wednesday.

